

BAKER & HOSTETLER LLP

45 Rockefeller Plaza
New York, NY 10111
Telephone: (212) 589-4200
Facsimile: (212) 589-4201
David J. Sheehan
Nicholas J. Cremona
Dean D. Hunt

*Attorneys for Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and
the Estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of
Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

PAUL KUNIN,

Defendant.

No. 08-01789 (SMB)

SIPA Liquidation

(Substantively Consolidated)

Adv. Pro. No. 10-04716 (SMB)

AFFIDAVIT FOR JUDGMENT BY DEFAULT

[illegible]

Farrell A. Hochmuth, being duly sworn, deposes and states:

1. I was admitted pro hac vice into this Court and am a partner with the firm of Baker & Hostetler LLP, attorneys for Irving H. Picard (“Trustee”), Trustee for the consolidated Liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the Estate of Bernard L. Madoff, and I am familiar with all the facts and circumstances in this action.

2. I make this affidavit pursuant to Rule 7055-2(a) of the Local Rules of the Bankruptcy Court for the Southern District of New York, in support of the Trustee’s application for entry of a default judgment against Defendant Paul Kunin (“Defendant”).

3. This action is an adversary proceeding commenced before the same Court before which the main underlying SIPA proceeding, No. 08-01789 (SMB) (the “SIPA Proceeding”), is pending. The SIPA Proceeding was originally brought in the United States District Court for the Southern District of New York as *Securities and Exchange Commission v. Bernard L. Madoff Investment Securities LLC et al.*, No. 08 CV 10791, and has been referred to this Court. This Court has jurisdiction over this adversary proceeding under 28 U.S.C. § 1334(b) and 15 U.S.C. §§ 78eee(b)(2)(A), (b)(4). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (H), and (O).

4. On February 7, 2011, the Trustee, in accordance with Bankruptcy Rule 7004(b) of the Federal Rules of Bankruptcy Procedure, timely served the Summons and Complaint upon Defendant. *See* Dkt. Nos. 4 and 5. An Affidavit of Service evidencing proper and timely service was filed with the Court. Dkt. No. 5. A true and correct copy of the Affidavit of Service is attached hereto as Exhibit 1.

5. The Defendant has not answered the Complaint, and the time for Defendant to answer the Complaint has expired. A true and correct copy of the Certificate of Default obtained pursuant to Local Bankruptcy Rule 7055-1 is attached hereto as Exhibit 2. *See also* Dkt. No. 11.

6. The Complaint in this adversary proceeding asserted claims pursuant to sections 78fff(b), 78FFF-1(a) and 78fff-2(c)(3) of the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa, *et seq.*, sections 105(a), 544, 548(a), 550(a), and 551 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, and other applicable law, seeking the avoidance and recovery of \$740,077.00 in connection with certain transfers of property by BLMIS to or for the benefit of Defendant.


7. On September 15, 2016, the Trustee voluntarily dismissed Counts Two through Six of the Complaint against Defendant with prejudice. The dismissal had no effect on or application to the Trustee's claims against Defendant in Count One of the Complaint. Dkt. No. 15.

8. This action seeks judgment for the liquidated amount of \$740,077.00 pursuant to Count One of the Complaint, which is justly due and owing, and no part of which has been paid.


9. Attached hereto as Exhibit 3 is a true and correct copy of the Affidavit of Service reflecting proper service of the Clerk's Entry of Default on Defendant on February 27, 2015. *See also* Dkt No. 13.

10. I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief.

Dated: Houston, Texas January 5, 2017


Farrell A. Hochmuth

Sworn to before me this
5th day of January, 2017


Notary Public, State of Texas

